

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

ROBERT YOUNG, et al	:	CASE NO: 1:16-CV-1006
	:	
Plaintiffs,	:	JUDGE TIMOTHY S. BLACK
	:	
vs.	:	
	:	
RANDALL WINKLER, Mayor	:	
Municipality of Carlisle, Ohio, et al	:	
	:	
Defendants.	:	

**MOTION FOR LEAVE TO FILE MOTION TO ENFORCE SETTLEMENT
AGREEMENT UNDER SEAL AND, IF SUSTAINED, MOTION TO DISCLOSE
CONFIDENTIAL MEDIATION COMMUNICATIONS TO ENFORCE SETTLEMENT**

Defendants, Mayor Randall Winkler, Deputy Mayor James Lickliter, Jake Fryman, Randy Jewett, Barb Tankersley, Jonathan McEldowney and Bradley McIntosh, and Jim Wahlrab (“Defendants”), respectfully request to file their Motion to Enforce Settlement Agreement under seal. Defendants’ Motion contains confidential communications made during mediation that are relevant to Plaintiffs breach of the Settlement Agreement. If the first branch of this motion is sustained, Defendants move the Court to order that disclosure of the confidential mediation communications at issue is necessary and appropriate here under S.D. Ohio Civ. R. 16.3(c)(3)(C). The following memorandum fully supports this motion.

Respectfully submitted,

s/Lynnette Dinkler

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Defendants Mayor Randall Winkler, Deputy Mayor

James Lickliter, and Council Members Jake

Fryman, Randy Jewett, Barb Tankersley, Jonathan

MEMORANDUM

Plaintiffs are in breach of the Settlement Agreement entered into on August 7, 2017. Accordingly, Defendants wish to file a Motion to Enforce Settlement Agreement with this Court. The use of confidential mediation communications is necessary to support Defendants' Motion.

This Court's local rules protect the disclosure of communications made during mediation, but an exception allows disclosure when the communications are necessary. S.D. Ohio Civ. R. 16.3(c) provides:

"In addition to Fed. R. Evid. 408 and any other applicable privilege, pursuant to 28 U.S.C. § 652(d), evidence of conduct or statements made in settlement negotiations is not admissible to prove liability for or invalidity of a claim or its amount. In order to promote candor and protect the integrity of this Court's ADR processes, in addition to other protections afforded by law, all communications made by any person . . . during ADR proceedings conducted under the authority of this Court are confidential and are subject to disclosure only as provided in subsection (c)(3) of this Rule."

The exception in S.D. Ohio Civ. R. 16.3(c)(3)(C) provides, "[c]ommunications deemed confidential by this rule may be disclosed, if such disclosure is not otherwise prohibited by law or court order, [if a] Judge assigned to the case determines that such disclosure is needed in connection with possible sanctions for misconduct relating to the ADR proceeding." This Court has previously "sustained" a motion for sanctions supported by mediation communications, relying on the exception under S.D. Ohio Civ. R. 16.3(c)(3)(C) after determining that disclosure of the confidential mediation communications was necessary. *Ferrero v. Henderson*, No. C-3-00-462, 2003 WL 21796381 (S.D. Ohio June 24, 2003).

Upon reviewing Defendants' Motion under seal, the Court can then consider whether disclosure of the confidential mediation communications is warranted as contended in Defendants' Motion to Enforce Settlement Agreement. It is Defendants' intention to comply with this Court's local rules protecting communications made at mediation. However, it is necessary for Defendants to disclose communications made at mediation to support Defendants' Motion to Enforce Settlement Agreement, which Defendants seek leave to file under seal. For these reasons, Defendants, in good faith, present this motion to respectfully request that they be permitted to file their Motion to Enforce Settlement Agreement under seal. If granted, Defendants next request the Court order disclosure of the confidential mediation communications, because they are relevant to the relief sought.

FOR THE FOREGOING REASONS, Defendants request that this motion be GRANTED in its entirety.

Respectfully submitted,

s/Lynnette Dinkler

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James Lickliter, and Council Members Jake

Fryman, Randy Jewett, Barb Tankersley, Jonathan

McEldowney and Bradley McIntosh, and Code

Enforcement Officer Jim Wahlrab

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of May, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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